In the Supreme Court of the United States

OCTOBER TERM 1973

No. 73-75

UNITED STATES STEEL CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

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1. The petitioner (Pet. Reply Br., p. 2) has correctly pointed out a factual error—which we regret—in the government's Brief in Opposition. The date of trial in this case was October 1971, some eight months prior to the decision of the Court of Appeals for the Third Circuit in *United States* v. *Pennsylvania Industrial Chemical Corp.*, 461 F.2d 468, rather than October 1972 as we erroneously stated. Nevertheless, *prior* to the trial in this case petitioner (a) had been charged, on the same day and in the same court as PICCO, with violations of the Refuse Act (Crim. No.

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71–74, W.D. Pa., filed April 6, 1971),[1] and (b) had been sufficiently aware of the defenses raised by PICCO at trial and adjudicated in the district court decision in *PICCO,* 329 F. Supp. 1118, July 26, 1971, to request *amicus* participation in the court of appeals in that case (granted September 9, 1971). Moreover, the decision rendered by the court of appeals in *PICCO* on May 30, 1972, supporting the defense of estoppel advanced by PICCO, was available to the petitioner prior to its appeal to the Seventh Circuit in this case; yet petitioner did not raise the issue in the court of appeals at that time.

2. We did not, as petitioner suggests, confuse United States Steel Corporation with Republic Steel Corporation. In *United States* v. *Republic Steel Corporation,* 155 F. Supp. 442, 450 (N.D. Ill.), the district court found as a matter of fact that:

> Two other iron mills are located along the banks of the entrance channel of the Calumet River. * * * These are the *United States Steel Company* and Youngstown Sheet and Tube Company. Since 1951 these two companies have paid for the dredging annually of all shoals in the entrance channel in order to maintain the authorized channel depth of 26 feet at that point. [Emphasis added.]

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[1] On September 4, 1973, PICCO pleaded *nolo contendere* to two counts of the four-count information. PICCO was fined $1,250 on each of the two counts. On September 27, 1973, United States Steel Corporation pleaded *nolo contendere* to 17 counts of the 35-count information in Crim. No. 71–74 (W.D. Pa.), *supra,* and was fined $500 on each of the 17 counts.

See also *United States* v. *Republic Steel Corporation*, 286 F. 2d 875, 888 (C.A. 7). More importantly, petitioner's own witness testified to the occurrence of dredging of petitioner's refuse as early as 1942 immediately adjacent to the steel plant in this case (Tr. 458–461).

The evidence at trial showed that the Grand Calumet River—found to be a navigable waterway—and the Calumet River were historically the same river, flowing through both Indiana and Illinois, and emptying into Lake Michigan (Tr. 146, 164, 205, 206, 432–435).

CONCLUSION

For the reasons set forth in the petition and above, the petition should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1973.

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